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Attorneys for Defendant and Counterclaim Plaintiff
KEATING DENTAL ARTS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL
CERAMICS, INC., DBA
GLIDEWELL LABORATORIES,
a California corporation,

Plaintiff,

vs.

KEATING DENTAL ARTS, INC.,
a California corporation,

Defendants.

KEATING DENTAL ARTS, INC.
a California corporation.

Plaintiff,

vs.

JAMES R. GLIDEWELL DENTAL
CERAMICS, INC., DBA
GLIDEWELL LABORATORIES,
a California corporation, and
DOES 1 THROUGH 5, inclusive.

Defendants.

Civil Action No.
SA-CV-11-01309-DOC(ANx)

**MEMORANDUM IN SUPPORT
OF DEFENDANT KDA'S EX
PARTE APPLICATION TO
RESCHEDULE HEARING ON
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

**CURRENTLY SCHEDULED
HEARING DATE:
Monday, March 5, 2012**

**PROPOSED HEARING DATE:
Monday, March 26, 2012**

**HEARING TIME:
8:30 a.m.**

**NOTICE OF MOTION AND MOTION TO RESCHEDULE HEARING ON MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Civ. Action No. SA-CV-11-01309-DOC(ANx)

1 Pursuant to Rule 7 (Fed.R.Civ.P.) and L.R. 7-19 and 7-19.1, Defendant
 2 Keating Dental Arts, Inc. ("KDA") is applying ex parte for the Court to postpone
 3 the hearing date (and the related briefing schedule) for KDA's pending Motion for
 4 Partial Summary Judgment.

5 The postponement being sought is for the benefit of opposing counsel and
 6 his client, to permit them additional time to prepare and file Glidewell's
 7 opposition to KDA's pending Motion for Partial Summary Judgment. If the Court
 8 and/or opposing counsel instead want to proceed with the hearing on the currently-
 9 scheduled date of March 5, KDA and its undersigned counsel are prepared to do
 10 that.

11 The name, address, telephone number, and e-mail address of opposing
 12 counsel is as follows:

13 Leonard Tachner, Esq.
 14 3990 Westerly Pl.
 15 Newport Beach, California 92660
 16 Telephone: 949-752-8525
 17 E-mail: tachlaw@aol.com and Ltachner@aol.com and
 18 jforemantachlaw@aol.com

19 The undersigned KDA attorney called opposing counsel yesterday and
 20 discussed the matters below, and the remarks below reflect some the substance of
 21 that discussion.

22 A proposed revised hearing date and briefing schedule is set forth in the
 23 [Proposed] Order filed herewith, and proposes postponing the hearing and all
 24 related dates by 21 days, as also set forth here:

Event Re KDA's Motion for Partial Summary Judgment	Currently Scheduled For:	Proposed New Date:
Glidewell Opposition Brief	February 13, 2012	March 5, 2012
KDA Reply Brief, if Any	February 20, 2012	March 12, 2012

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27 Civ. Action No. SA-CV-11-01309-DOC(ANx)

1	Hearing	March 5, 2012	March 26, 2012
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2 Although this motion is filed on behalf of KDA, it is made necessary
 3 because of certain personal matters involving the undersigned attorney for KDA.
 4 The need for this postponement is NOT the fault of KDA in any way.

5 Moreover, KDA's undersigned attorney hopes and believes that some
 6 reasonable accommodation for rescheduling can be reached that will not unduly
 7 prejudice or inconvenience the Court or either of the parties. The undersigned
 8 notes that, to date, opposing counsel Mr. Tachner has been very reasonable in
 9 connection with the matters discussed herein, and the undersigned is grateful and
 10 looks forward to reciprocating, including as set forth herein.

11 The postponement is intended for the reasonable benefit of opposing
 12 counsel and his client Glidewell, to help ensure that they have a full and fair
 13 opportunity to review and file any opposition brief regarding KDA's Motion for
 14 Partial Summary Judgment.

15 When the undersigned discussed this matter yesterday with opposing
 16 counsel Mr. Tachner, he initially suggested that three-four weeks postponement
 17 might be sufficient for him to prepare his filings. As noted in the Ex Parte
 18 Application itself, however, Mr. Tachner also made clear that his client would not
 19 stipulate to any extension, and thus the undersigned has brought this matter to the
 20 Court ex parte. Mr. Tachner did not indicate whether his client would file any
 21 opposition to this application for postponement.

22 The undersigned is requesting this postponement due to his not insubstantial
 23 delays in preparing and filing KDA's Motion for Partial Summary Judgment.
 24 Rather than providing those documents to opposing counsel on the originally-
 25 intended "advance" filing/service date of January 4, 2012 (which would have
 26 given Glidewell far more than a normal amount of time to review the materials
 27 before filing its opposition), the undersigned did not complete that filing until

1 yesterday.

2 As the originally-planned service date of January 4 arrived and passed, and
3 subsequent revised target dates did as well, the undersigned communicated several
4 times with opposing counsel Mr. Tachner and indicated that the undersigned
5 would need more time to complete the filing. As the delay turned into several
6 weeks, the undersigned emailed to opposing counsel one of the main cases upon
7 which he intended to base KDA's motion (the 2002 Microsoft v. Lindows.com
8 decision regarding Microsoft's alleged rights in the trademark WINDOWS), and
9 then even sent drafts of the various documents to opposing counsel, in hopes that
10 opposing counsel would be able to review those materials and begin preparing any
11 response/opposition or other action on behalf of his client.

12 In case it matters to the Court or to opposing counsel as they consider this
13 issue, the reasons for the delay include the following: a prolonged visit from the
14 undersigned's entire out-of-state family (from Louisiana, Kansas, Oklahoma,
15 Texas, and San Francisco; the December/January holidays generally, and other
16 personal matters, including a severe and prolonged bout of the recent flu epidemic
17 that has been going around (that flu is continuing to linger for weeks after the
18 undersigned and his office staff and family initially came down with it in January).

19 The Court may recall that, during the Scheduling Conference just before
20 Christmas, the Court accepted the undersigned's request for a hearing date on the
21 Motion for Partial Summary Judgment, and set it for March 5, 2012. In suggesting
22 that date, the undersigned expected and intended to be able to file and serve
23 KDA's Motion for Partial Summary Judgment by around January 4. That date
24 would afford opposing counsel and his client more than a month to review the
25 motion and its supporting papers prior to filing any opposition to the motion.

26 Yesterday, the undersigned finally completed the documents and filed and
27 served them on opposing counsel. The undersigned confirms to the Court and to

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1 opposing counsel that this delay was not intentional and definitely was not
2 intended to try to obtain any unfair advantage over opposing counsel or his client.
3 The undersigned understands that considerations of fairness and due process
4 require that opposing counsel and his client be afforded a reasonable opportunity
5 to review and respond to KDA's Motion for Partial Summary Judgment. The
6 undersigned would expect nothing less if the situation were reversed.

7 Accordingly, subject to the Court's approval, KDA hereby requests that the
8 hearing date for KDA's Motion for Partial Summary Judgment be moved from
9 March 5 to March 26. Under the Court's normal briefing schedule, this means that
10 Glidewell's opposition will be due on March 5, and any reply by KDA on March
11 12.

12 There are two other related considerations that are not discussed above, but
13 which were discussed with opposing counsel yesterday.

14 The first is discovery during the interim (between now and the hearing,
15 whenever it may be rescheduled). To date, the parties have foregone formal
16 discovery, based on the expected March 5 hearing date and the impact that the
17 Court's ruling may have on the dispute. However, opposing counsel expressed
18 concern that the rescheduling discussed herein may affect his client's ability to
19 complete discovery in a timely manner. In view of the relatively short proposed
20 extension for the hearing date (three weeks), the undersigned remains hopeful that
21 the parties and their counsel can work out a reasonable accommodation of
22 Glidewell's concerns. Among other things, KDA might agree to shortened
23 response times, or Glidewell might limit any immediate discovery requests to
24 those needed for responding to KDA's Motion for Partial Summary Judgment or
25 any other relatively "immediate" issues.

26 The second is the Settlement Conference with Magistrate Judge Nakazato,
27 currently scheduled for March 22, 2012. The parties selected that date in part

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1 because they hoped to have the Court's ruling on KDA's Motion for Partial
2 Summary Judgment prior to that date, so that they could consider that ruling in
3 connection with that settlement conference. In view of the foregoing, the
4 undersigned expects to request a similar postponement of the date for that
5 Settlement Conference (subject to the approval of Magistrate Judge Nakazato).

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7 Respectfully submitted,
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10 Dated: 2012-02-14
11 /J. Mark Holland/
12 J. Mark Holland
13 **J. MARK HOLLAND & ASSOCIATES**
14 Attorney for Defendant and Counterclaim-
15 Plaintiff KEATING DENTAL ARTS, INC.,
16 a California corporation
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